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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT TACOMA

7 ALLAN PARMELEE,

8 Plaintiff,

9 v.

10 TONY DUNNINGTON, HARLAN  
11 FINCH, DOUGLAS WADDINGTON,  
12 RICHARD HAYWARD, SCOTT  
13 RUSSELL, DANIEL WHITE, CPM  
14 DAN VAN OGLE, MARCIA  
15 SANCHEZ, ED HOSKINS, STEVE  
16 RAMSEY, ELDON VAIL, and JOSEPH  
17 GATCHELL,

18 Defendants.

NO. C11-5771 RBL/KLS

ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
MOTIONS FOR COURT-ORDERED  
SERVICE AND FOR LEAVE TO  
AMEND COMPLAINT

19 Before the Court is Plaintiff's motion for court-ordered service and leave to amend his  
20 complaint. ECF No. 13. Plaintiff's First Amended Verified Complaint is filed at ECF No. 14.  
21 He also filed a "Third Affidavit of Specific Evidence in Support of Amended Complaint."  
22 ECF No. 15. Having reviewed the motions, Defendants' objections, and balance of the  
23 record, the Court finds and **ORDERS** as follows:

24 **BACKGROUND**

25 On or about January 28, 2011, Plaintiff Allan Parmelee filed a complaint in Mason  
26 County Superior Court against Defendants Tony Dunnington, Harlan Finch, Douglas  
Waddington, Richard Hayward, Scott Russell, Daniel White, DPM Dan Van Ogle, Marcia

1 Sanchez, Ed Hoskins, Steve Ramsey, Eldon Vail, and Joseph Gatchell. Defendants removed  
2 the case to this Court, filed an Answer, and the Court entered a Pretrial Scheduling Order.  
3 ECF Nos. 6 and 7. At the time Defendants removed the case, Plaintiff had not served any of  
4 the Defendants as required by Washington law. *See* Wash. Rev. Code 4.28.080(15);  
5 Washington Superior Court Civil Rule (CR) 4(c); and CR 4(d)(2). Plaintiff filed a motion to  
6 remand. ECF No. 8. The motion to remand was denied. ECF Nos. 12 and 22.

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8 Plaintiff's original complaint (filed before removal) was 11 pages and named 12  
9 defendants. ECF No. 1-0, pp. 11-21. Plaintiff's proposed amended complaint is 20 pages  
10 long, names 22 defendants, and drops two defendants (Joseph Gatchell and Ed Hoskins) from  
11 the original list of defendants. The additional proposed defendants are Melinda Carson,  
12 Marjorie Owens (or Marjorie Martin), Sharon Thach, Lori Ramsdell-Gilkey, Edward Woods,  
13 Jeff Sanders, Denise Vaughan, Gary Larson, Dan Pacholke, Alice Payne, Jeff Sanders, and  
14 Diana Earles. *Compare* ECF No. 14, p. 1 with ECF No. 1-0, p. 11.

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16 **A. Amendment of Complaint**

17 This Court retains discretion under Rule 15 regarding whether to grant leave to amend.  
18 Rule 15(a) provides that "[t]he court should freely give leave [to amend] when justice so  
19 requires." Fed.R.Civ.P. 15(a)(2). "This policy is 'to be applied with extreme liberality.'" *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir.2003) (quoting *Owens*,  
20 244 F.3d at 712). "Absent prejudice, or a strong showing of any of the remaining *Foman v.*  
21 *Davis*, 371 U.S. 178, 83 S. Ct. 227, 9 L.Ed.2d 222 (1962) factors, there exists a *presumption*  
22 under Rule 15(a) in favor of granting leave to amend." *Id.* The *Foman* factors include: "[1]  
23 undue delay, bad faith or dilatory motive on the part of the movant, [2] repeated failure to cure  
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1 deficiencies by amendments previously allowed, [3] undue prejudice to the opposing party by  
2 virtue of allowance of the amendment, [and] [4] futility of amendment.” *Eminence Capital*,  
3 316 F.3d at 1052 (quoting *Foman*, 371 U.S. at 182, 83 S. Ct. 227) (internal quotation marks  
4 omitted).

5 Justice generally does not require such leave if a movant demonstrates “undue delay,  
6 bad faith, or dilatory motive,” or if undue prejudice to the opposing party would result.

7 *Airborne Beepers & Video, Inc. v. AT & T Mobility LLC*, 499 F.3d 663, 666 (7th Cir. 2007).

8 Bad faith includes the vexatious expansion of litigation. *See Sneller v. Bainbridge Island*, 606  
9 F.3d 636, 640 (9th Cir. 2010).

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11 Defendants argue that Mr. Parmelee is acting in bad faith because he hopes to use this  
12 action, including his proposed expansion of this case to (1) re-litigate the permanent injunction  
13 the superior courts entered against him<sup>1</sup>, including the injunction pertaining to the Department  
14 of Corrections, which is now final in the Washington courts; and (2) engage in the same  
15 behavior that resulted in his entry of the permanent injunction in the first place, including the  
16 expansion of individuals against whom he can engage in the same routine of harassment.

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18 Defendants argue that almost all of the individuals Plaintiff proposes to add as new defendants  
19 are being sued either for their participation in the injunction suit, a matter in which litigation  
20 has been terminated, or because they did not respond to one of many pieces of correspondence  
21 written by Plaintiff regarding alleged conditions of confinement. ECF No. 18, pp. 3-4.

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23 <sup>1</sup> According to Defendants, three different courts have entered permanent injunctions against Plaintiff  
24 under the Public Records Act, Wash. Rev. Code § 42.56.565 (also codified at one time as Wash. Rev. Code §  
25 42.56.620, and as Laws of 2009, ch. 10 §1), for his abusive activity against public officials. ECF No. 1-3 at 17-29  
26 (permanent injunction barring Plaintiff from submitting public records requests to state agencies, including  
submitted requests); ECF No. 1-3 at 31-37 (permanent injunction barring Plaintiff from submitting public records  
requests to the city of Bellevue, including submitted requests); and ECF No. 1-3 at 39-47 (permanent injunction  
barring Mr. Plaintiff from submitting public records requests to King County, including submitted requests).

1 Plaintiff states that he was forced to file his original complaint without access to his  
2 files and that the only substantive difference between the two complaints is to add specific  
3 detail and to add parties unknown at the time he originally filed his complaint. ECF No. 21.  
4 Plaintiff also filed a “Third Affidavit of Specific Evidence” purportedly in support of his  
5 proposed amended complaint. ECF No. 15. Attached to the affidavit are approximately 200  
6 pages of materials. The affidavit is filed separate from the proposed complaint and the Court  
7 does not consider the affidavit or attached documents as part of the proposed amended  
8 complaint. According to Defendants, the materials consist largely of pages taken from  
9 Plaintiff’s personal restraint petitions, public records cases, and from proceedings already  
10 completed or under appeal elsewhere in Washington courts where he has been permanently  
11 enjoined under Wash. Rev. Code § 42.56.565 from engaging in public records activity  
12 regarding state agencies or other entities. ECF No. 18 and ECF No. 19 (Declaration of Daniel  
13 J. Judge). Plaintiff explains that his access to his materials “may not last” and therefore, he felt  
14 the need to file the five declarations consisting of “PRP 17-20 and Appendix A thru K.” ECF  
15 No. 21.  
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18 To the extent that Plaintiff is attempting to supplement his proposed amended  
19 complaint with additional factual allegations, he will not be allowed to do so in an affidavit.  
20 His legal claims and all factual allegations in support of those claims must be set forth in the  
21 complaint. The Court will not look to a separate affidavit or prior pleading. In addition, while  
22 it is certainly permissible to attach exhibits to pleadings and motions if the exhibits are  
23 incorporated by reference (Fed.R.Civ.P. 10(c)), they are not necessary in the federal system of  
24 notice pleading. Fed.R.Civ.P. 8(a). Plaintiff is advised that under Rule 8 of the Federal Rules  
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1 of Civil Procedure, he is only obligated to provide “a short and plain statement of [his] claim”.  
2 He is not obligated to prove the allegations in his complaint at this stage. Attaching a large  
3 number of exhibits to a complaint will result in the complaint being dismissed for failure to  
4 comply with Federal Rule of Civil Procedure 8, as it will render the complaint to be neither a  
5 “short” nor “plain” statement of his claims. In fact, as written, it is not entirely clear what  
6 Plaintiff is alleging that the newly added Defendants did to violate his constitutional rights. He  
7 alleges that Melinda Carson, Jeff Sanders, and Diana Earles, signed off on infraction reports on  
8 or around July 28, 2008 (ECF No. 14, pp. 8, 12, 15). As to the remaining proposed defendants,  
9 however, Plaintiff lists their names together in conclusory fashion and follows their names with  
10 vague and conclusory allegations. For example, Plaintiff states:

12 Defendants Vail, Payne, Waddington, Dunnington, White, Russell, Vaughan,  
13 Larson, Ramsey, Pacholke, Hayward and others knew of and exchanged  
14 communications allowing, furthering and refusing to take corrective measures,  
15 and relying on this infraction regardless of its disposition to adversely treat  
Parmelee.

16 ECF No. 14, p. 8 ¶ 5.7. The foregoing statement is completely devoid of any facts and fails to  
17 place any defendant on notice of any claim. Plaintiff does this repeatedly in his proposed  
18 complaint. *See e.g.*, ECF No. 14, p. 3 (¶3.3), pp. 6-7 (¶5.4), p. 13 (¶5.9), and pp. 15-16  
19 (¶5.25). Plaintiff must allege what each of the named Defendants has allegedly done to violate  
20 his constitutional rights in a short and plain statement and he must do so within the body of the  
21 complaint. He may not incorporate his claims by reference to his affidavit.

23 In addition, Plaintiff may not attach exhibits to his complaint for the purpose of using  
24 them as evidence at later stages in litigation. This Court will not serve as a storehouse for his  
25 evidence. Evidence should not be submitted to the Court until this action reaches an  
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1 appropriate stage in litigation for the submission of evidence, such as in response to a motion  
2 for summary judgment, at trial, or when specifically requested by the Court. Further, if and  
3 when this action does reach an appropriate stage in litigation for the submission of evidence,  
4 Plaintiff will not be able to refer to exhibits attached to his complaint as evidence. Evidence  
5 must be submitted at the proper time and under the proper procedures. Attaching exhibits to  
6 the complaint is not the proper procedure for admitting evidence for the purpose of proving his  
7 allegations.  
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9 Based on the documents submitted, it appears that Plaintiff intended that his complaint  
10 consist of his First Amended Complaint (ECF No. 14) and his Third Affidavit (ECF No. 15).  
11 Plaintiff shall not be allowed to proceed under two separate filings as his complaint. He must  
12 submit an amended complaint which contains all of his legal claims and factual allegations in  
13 one pleading. Plaintiff may submit a proposed amended complaint to plead claims against  
14 additional parties limited to their involvement in the infractions and retaliatory conduct which  
15 form the basis of Plaintiff's original complaint. Plaintiff may submit the amended complaint to  
16 the Court **on or before March 16, 2012.**  
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18 **B. Service at Court Expense or By Mail**

19 Service by court clerk or the U.S. Marshal is reserved for individuals who have been  
20 approved to proceed *in forma pauperis*. Fed. R. Civ. P. 4(c)(3) (requiring the court to order  
21 service of process "if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. §  
22 1915 . . ."). Federal law restricts this Court from allowing Mr. Parmelee to proceed *in forma*  
23 *pauperis* because he already has amassed at least three strikes in federal court under the Prison  
24 Litigation Reform Act (PLRA). *See Parmelee v. LeRoy*, No. 01-cv-1467-R (W.D. Wash.  
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1 2001), *summarily affirmed because appeal as lacking any merit*, No. 02-35164 (9th Cir. 2002).

2 Therefore, his motion requesting that the Clerk or U.S. Marshal serve the Defendants (ECF No.  
3 13) is **DENIED**.

4 It is Mr. Parmelee's obligation to serve the Defendants with the summons and  
5 complaint in this action. Mr. Parmelee is directed to Rule 4 of the Federal Rules of Civil  
6 Procedure, which sets forth the rules and procedure for service of the Summons and  
7 Complaint. Pursuant to Rule 4(m), Plaintiff must serve copies of the Summons and Complaint  
8 upon each of the named Defendants within 120 days after the filing of the Complaint. Unless  
9 the Plaintiff can show good cause for his failure to serve, the Court shall dismiss the action  
10 without prejudice as to each defendant not served or shall extend the time for service. Fed. R.  
11 Civ. P. 4(m). This applies to all Defendants who have not yet been served in this action.  
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14 Because the Court is allowing Mr. Parmelee to amend his complaint and is allowing  
15 him until March 16, 2012 to submit an amended complaint, his 120 days to serve the named  
16 defendants will not begin to run until he has submitted the complaint or until the Court has  
17 approved the amended complaint, whichever occurs later.

18 Accordingly, it is **ORDERED**:

19 (1) Plaintiff's motion for service and for leave to amend (ECF No. 13) is  
20 **GRANTED IN PART AND DENIED IN PART**. Plaintiff may submit an amended  
21 complaint to plead claims against additional parties limited to their involvement in the  
22 infractions and retaliatory conduct which form the basis of Plaintiff's original complaint.  
23 Plaintiff may submit the amended complaint to the Court **on or before March 16, 2012**.  
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1 Plaintiff's motion requesting that the Clerk or U.S. Marshal serve the Defendants (ECF No. 13)  
2 is **DENIED**. Plaintiff has one hundred and twenty (120) days from March 16, 2012 or until  
3 the Court approves his Amended Complaint, whichever is later, to serve all unserved  
4 Defendants.

5 (2) The Clerk shall send copies of this Order to Plaintiff and to counsel for  
6 Defendants.  
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8 **DATED** this 16th day of February, 2012.

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11 Karen L. Strombom  
12 United States Magistrate Judge  
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